IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 5006 OF 1991

IN

CIVIL REVISION APPLICATION NO. 664 OF 1991

Dr.Motiram A. Diksit & Anr. .. Applicants

versus

Bhimrao Vijraj Deshpande .. Respondent

...

Mr.S.M. Dikshit for the petitioner.

Mr.D.A. Athavale for the respondents

CORAM : B.H. MARLAPALLE,J

DATED : 30th September 2005.

P.C.:

1. Heard Mr.Dikshit, the learned counsel for the applicant plaintiff and Mr.Athavle for the respondent defendant.

2. This is an application praying for setting

aside the order passed by this Court on 8th September 1991 by which Civil Revision Application no.664 of 1987 was allowed. It is submitted by Mr.Dixit that the said order dated 10th September 1991 was passed ex-parte. There is no dispute that R.A.E. Suit No.2199 of 1970 was filed by the present applicants in the Court of Small causes for eviction of the defendant. The defendants filed written statement on 9th August 1976 in the Civil Suit. The issues were framed on 9th September 1976 and the suit was listed for hearing on 15.10.1976, 6.2.1977 and 7.7.1977. The suit was adjourned from time to time and again dates were fixed after about 8 years and plaintiff sought adjournments on 1.3.1985, 4.4.1985, 12.6.1985, 19.6.1985, 20.7.1985, 21.8.1985, 11.9.1985, 20.11.1985, 19.12.1985, 21.1.1986, 17.2.1986 and 17.3.1986. The suit was adjourned to 16.4.1986 on which date again the plaintiffs sought time on the ground that the plaintiff no.1 was ill. The trial Court directed examination of the plaintiff no.1 on commission and the suit was posted to 13.6.1986 on which date the plaintiffs were absent and was their Advocate. The Advocate Junior applied for adjournment on the ground of plaintiffs illness. It was under these circumstances that the suit came to

be dismissed on 13.6.1986 for non prosecution.

3. On 20.6.1986, the plaintiffs applied for restoration of the suit. This application was opposed by the defendant vide his reply dated 17th September 1986. The restoration application was registered as Misc. Notice no.4246 of 1986 and it was allowed by the trial Court on 4th November 1987 on payment of costs quantified at Rs.200/-.

4. This order came to be challenged by the defendant in Civil Revision Application no.664 of 1987. This Court considered the issue as to whether the learned Judge of the trial Court was right in passing the order dated 4th November 1987 and by detailed reasoning set out in paragraph nos.3 and 4 of the judgement dated 10th September 1991, this Court recorded a finding that the plaintiffs had failed to make out a case for sufficient cause to restore the suit. This Court held that there was no justification in setting aside the order of dismissal of the suit for non prosecution and the restoration order was passed on totally irrelevant grounds/considerations.

5. When the Civil Revision Application was decided on merits by this Court on 10th September 1991, the said decision cannot be set aside merely on the ground that the learned Advocate for the respondent plaintiffs was absent and it was an ex-parte decision, that too after a lapse of 14 years during which period the plaintiffs could have instituted a fresh suit for eviction and perhaps could have been successful in getting such a fresh suit decided by new. I am therefore satisfied that this application is devoid of merits and the prayer made therein for setting aside the decision of this Court dated 10th September 1991 in allowing Civil Revision Application no.664 of 1987 cannot be set aside.

6. Application is therefore, rejected. However, this order will preclude the applicant from instituting fresh proceedings for eviction as per law.

B.H. MARLAPALLE, J